



February 24, 2006

ENGROSSED SENATE BILL No. 33

DIGEST OF SB 33 (Updated February 22, 2006 2:24 pm - DI 107)

Citations Affected: IC 29-3; IC 34-30.

Synopsis: Volunteer advocates for incapacitated adults. Creates a volunteer advocates for incapacitated adults program (program) to represent and protect for a limited period the interests of an incapacitated or protected person who is at least 18 years of age. Requires a volunteer advocate for incapacitated adults to report to the court and make recommendations regarding the incapacitated or protected person. Provides civil immunity for a program or an employee or a volunteer of a program.

Effective: July 1, 2006.

Alting, Craycraft, Tallian

(HOUSE SPONSORS — KOCH, BROWN T, KLINKER, MICON)

January 9, 2006, read first time and referred to Committee on Rules and Legislative Procedure.

January 19, 2006, amended; reassigned to Committee on Judiciary.

January 26, 2006, amended, reported favorably — Do Pass.

January 30, 2006, read second time, ordered engrossed. Engrossed.

January 31, 2006, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 7, 2006, read first time and referred to Committee on Family, Children and Human Affairs.

February 23, 2006, reported — Do Pass.

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ES 33—LS 6085/DI 13+



February 24, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 33

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-1-15.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]: **Sec. 15.5. "Volunteer advocate for incapacitated adults**
4 **means an individual who:**

5 (1) **is a volunteer;**

6 (2) **has completed a limited guardian training program**
7 **approved by a court;**

8 (3) **is supervised by a community volunteer advocates for**
9 **adults program;**

10 (4) **is appointed by a court to serve as a limited guardian for**
11 **an incapacitated person or protected person who is at least**
12 **eighteen (18) years of age; and**

13 (5) **provides reports and makes recommendations to a court.**

14 SECTION 2. IC 29-3-8.5-1 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A court in a
16 proceeding under this article may appoint a volunteer advocate for
17 seniors **or a volunteer advocate for incapacitated adults.**

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1 SECTION 3. IC 29-3-8.5-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A volunteer advocate
 3 for seniors **or a volunteer advocate for incapacitated adults** shall
 4 submit to the court:

- 5 (1) a progress report fifteen (15) days after the date of
- 6 appointment describing the matters required by the court; and
- 7 (2) a final report sixty (60) days after the date of appointment:
- 8 (A) describing the matters required by the court; and
- 9 (B) making recommendations to the court as to whether a need
- 10 exists for continued representation of the incapacitated or
- 11 protected person.

12 SECTION 4. IC 29-3-8.5-3 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. A volunteer advocate
 14 for seniors **or a volunteer advocate for incapacitated adults** shall:

- 15 (1) serve as a limited guardian to represent and protect the
- 16 interests of an incapacitated or protected person; ~~who is at least~~
- 17 ~~fifty-five (55) years of age;~~
- 18 (2) investigate and gather information regarding the health,
- 19 welfare, and financial circumstances of the incapacitated or
- 20 protected person, as directed by a court;
- 21 (3) facilitate and authorize health care, social welfare, and
- 22 residential placement services as needed by the incapacitated or
- 23 protected person;
- 24 (4) advocate for the rights of the incapacitated or protected
- 25 person;
- 26 (5) facilitate legal representation for the incapacitated or protected
- 27 person; and
- 28 (6) perform any other duty required by a court.

29 SECTION 5. IC 29-3-8.5-4 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. A volunteer advocate
 31 for seniors **or a volunteer advocate for incapacitated adults** may:

- 32 (1) consent to medical and other professional care and treatment
- 33 for the incapacitated or protected person's health and welfare;
- 34 (2) secure the appointment of a guardian or coguardian in another
- 35 state;
- 36 (3) take custody of the incapacitated or protected person and
- 37 establish the person's place of abode within Indiana or another
- 38 state in accordance with IC 29-3-9-2;
- 39 (4) institute proceedings or take other appropriate action to
- 40 compel the performance by any person of a duty to support the
- 41 incapacitated or protected person's health or welfare; and
- 42 (5) delegate to the incapacitated or protected person certain

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responsibilities for decisions affecting the person's business affairs and well-being.

SECTION 6. IC 29-3-8.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. If a court appoints an individual to serve as a volunteer advocate for seniors **or a volunteer advocate for incapacitated adults**, the appointment shall be for a period of sixty (60) days. After the initial sixty (60) day period, the court may, upon petition by the volunteer or upon the court's own motion, extend the appointment for a period as determined by the court to be necessary to protect the interests of the incapacitated or protected person.

SECTION 7. IC 29-3-8.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. A volunteer advocate for seniors **or a volunteer advocate for incapacitated adults** is considered an officer of the court for the purpose of representing the interests of an incapacitated or protected person.

SECTION 8. IC 29-3-8.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. The court may appoint an attorney to represent a volunteer advocate for seniors **or a volunteer advocate for incapacitated adults**.

SECTION 9. IC 29-3-8.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. Except for gross misconduct:

- (1) a volunteer advocate for seniors **program or a volunteer advocate for incapacitated adults** program that;
 - (2) an employee of a volunteer advocates for seniors **program or a volunteer advocate for incapacitated adults** program who; or
 - (3) a volunteer for a volunteer advocates for seniors **program or a volunteer advocate for incapacitated adults** program who;
- performs duties in good faith is immune from any civil liability resulting from the program's, employee's, or volunteer's performance.

SECTION 10. IC 29-3-8.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. A volunteer advocate for seniors **or a volunteer advocate for incapacitated adults** under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

- (1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or
- (2) the individual has previously:

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1 (A) appointed a health care representative under IC 16-36-1;
 2 (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or
 3 IC 16-36-5;
 4 (C) executed a power of attorney under IC 30-5-4; or
 5 (D) had a guardian appointed by the court under IC 29-3.
 6 SECTION 11. IC 29-3-9-2 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A guardian (other
 8 than a temporary guardian), ~~or a~~ volunteer advocate for seniors, **or a**
 9 **volunteer advocate for incapacitated adults** appointed under
 10 IC 29-3-8.5 may, with the approval of and under such conditions as
 11 may be imposed by the court after notice and hearing, change the
 12 physical presence of the protected person to another place in Indiana
 13 or to another state if the court finds that such a change is in the best
 14 interests of the protected person. Upon such a change, the guardianship
 15 may be limited or terminated by the court.
 16 SECTION 12. IC 34-30-2-125.5, AS AMENDED BY P.L.2-2005,
 17 SECTION 114, IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2006]: Sec. 125.5. IC 29-3-8.5-8 (Concerning
 19 a volunteer advocate for seniors **or a volunteer advocate for**
 20 **incapacitated adults**).

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SENATE MOTION

Madam President: I move that Senator Garton be removed as author of Senate Bill 33 and that Senator Alting be substituted therefor.

GARTON

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 33, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

(Reference is to SB 33 as introduced.)

GARTON, Chairperson

SENATE MOTION

Madam President: I move that Senator Craycraft be added as coauthor of Senate Bill 33.

ALTING

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 33, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 12, begin a new paragraph, and insert:

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"SECTION 1. IC 29-3-1-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 15.5. "Volunteer advocate for incapacitated adults means an individual who:**

- (1) is a volunteer;**
- (2) has completed a limited guardian training program approved by a court;**
- (3) is supervised by a community volunteer advocates for adults program;**
- (4) is appointed by a court to serve as a limited guardian for an incapacitated person or protected person who is at least eighteen (18) years of age; and**
- (5) provides reports and makes recommendations to a court."**

Page 1, line 16, reset in roman "seniors".

Page 1, line 16, after "seniors" delete "." and insert "**or a volunteer advocate for**".

Page 2, line 2, reset in roman "seniors".

Page 2, line 2, after "seniors" insert "**or a volunteer advocate for**".

Page 2, line 12, reset in roman "seniors".

Page 2, line 12, after "seniors" insert "**or a volunteer advocate for**".

Page 2, line 14, after "person" insert ";".

Page 2, line 14, strike "who is at least".

Page 2, line 15, delete "eighteen (18)".

Page 2, line 15, strike "years of age;".

Page 2, line 29, reset in roman "seniors".

Page 2, line 29, after "seniors" insert "**or a volunteer advocate for**".

Page 3, line 3, reset in roman "seniors,".

Page 3, line 3, after "seniors" delete "," and insert "**or a volunteer advocate for**".

Page 3, line 11, reset in roman "seniors".

Page 3, line 11, after "seniors" insert "**or a volunteer advocate for**".

Page 3, line 16, reset in roman "seniors.".

Page 3, line 16, after "seniors" delete "." and insert "**or a volunteer advocate for**".

Page 3, line 21, reset in roman "seniors".

Page 3, line 21, after "seniors" insert "**program or a volunteer advocate for**".

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Page 3, line 23, reset in roman "seniors".

Page 3, line 23, after "seniors" insert "**program or a volunteer advocate for**".

Page 3, line 25, reset in roman "seniors".

Page 3, line 25, after "seniors" insert "**program or a volunteer advocate for**".

Page 3, line 31, reset in roman "seniors".

Page 3, line 31, after "seniors" insert "**or a volunteer advocate for**".

Page 4, line 5, after "guardian)" insert ",".

Page 4, line 5, strike "or" and insert "a".

Page 4, line 5, reset in roman "seniors".

Page 4, line 5, after "seniors" insert ", **or a volunteer advocate for**".

Page 4, line 16, reset in roman "seniors).".

Page 3, line 25, after "seniors" delete ")." and insert "**or a volunteer advocate for**".

and when so amended that said bill do pass.

(Reference is to SB 33 as printed January 20, 2006.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senator Tallian be added as coauthor of Engrossed Senate Bill 33.

ALTING

COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred Senate Bill 33, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BUDAK, Chair

Committee Vote: yeas 8, nays 0.

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